

## **The complaint**

Mr and Mrs B complain that Bank of Scotland plc has not treated them fairly in the way it administered their mortgage.

## **What happened**

Mr and Mrs B have a mortgage with Bank of Scotland (BoS). In 2001, they took out an interest only "Personal Choice" mortgage that had flexible features, including a draw down facility that from time to time they used to support their business. In September 2016 the term of the mortgage ended and BoS has taken legal action to take possession of the property.

Mr and Mrs B complain:

- It is unfair that BoS is taking repossession action.
- BoS closed the business bank account for their limited company, which meant they were unable to defend a legal claim against them.
- BoS did not communicate fairly with Mr and Mrs B
- BoS unfairly declined an application for a new mortgage in 2014/15 and when the term ended.
- That BoS mis-sold the mortgage. It was unaffordable for them.
- Their mortgage balance has increased since the term ended.
- BoS is unfairly applying legal fees.
- BoS collected mortgage payments that did not cover the interest, so the balance went up.

The investigator said we couldn't consider the complaint about the business bank account as it was in the name of a limited company and that company was now dissolved.

The investigator set out that some of the complaints had been made outside our time limits so we couldn't consider them. But we could look at all events from May 2018 – and we could also consider whether some events before that gave rise to an unfair relationship.

The investigator did not think the complaint should be upheld. Mr and Mrs B did not accept what the investigator said.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

As the investigator said, we can consider whether there has been an unfair relationship between Mr and Mrs B and the lender since the inception of the loan – taking into account all matters relevant to the fairness of that relationship, whenever they occurred.

#### Legal action

When Mr and Mrs B took out the mortgage they agreed to repay it by September 2016. As a starting point, Mr and Mrs B were in breach of contract when they did not repay the mortgage as agreed. But BoS had an obligation to treat Mr and Mrs B fairly. That meant when the term ended it should have explored what options were available to them and given them time to put in place a viable plan to repay the mortgage. To do that BoS would need to understand Mr and Mrs B's circumstances.

I can see that there was little contact from BoS regarding the mortgage between 2016 and August 2019. That has not necessarily disadvantaged Mr and Mrs B as they want to stay in their home and extend the term of the mortgage. From 2019 I can see that BoS attempted to engage with Mr and Mrs B. But it was only in May 2021 that Mr and Mrs B gave BoS sufficient detail about their income and expenditure for it to consider what it could offer them. BoS said that extending the mortgage on any basis was not affordable or sustainable. That does not seem unreasonable bearing in mind the information it had.

Looking at the evidence I have, I can't see that Mr and Mrs B put forward any viable plans to repay the mortgage. In view of that and as there does not appear to be any sustainable way for the mortgage to continue, I don't consider it was unreasonable for BoS to start legal action when it did.

I can't interfere with the court's judgment. If Mr and Mrs B consider that BoS has not presented accurate information to the court or has not complied with a court order, then that is something that would usually be better dealt with in court.

Repossession should remain a last resort. And BoS should consider any proposals Mr and Mrs B have to repay the mortgage. But BoS has no obligation to accept a reduced amount in settlement of the mortgage.

#### Communication

I accept that BoS might not have responded the way Mr and Mrs B wanted to all of their requests. But it set out clearly that its end of term team was best placed to deal with those queries. And it has provided evidence that it set out its position in a suitably clear way.

While Mr and Mrs B might at times have experienced delays in reaching BoS by phone. It offered them £25 for any upset that caused. I think that is likely to be fair. I note that BoS sent Mr and Mrs B a cheque for that amount, but it is not clear if it has been cashed or not.

#### Declined application

BoS accept that from time to time it has discussed further lending or a new mortgage product with Mr and Mrs B. but there is no evidence of any formal mortgage application being made. I think it was reasonable for BoS to require an application so it could fully review and understand Mr and Mrs B's circumstances. It has explained that it no longer offers Personal Choice mortgages. And it would not be reasonable for it to extend the term of the mortgage without being satisfied that such an extension was in Mr and Mrs B's best

interests. They'd already had an interest only mortgage for over twenty years and they did not have any realistic plan to ready it at the end of any extended term, so I do not consider it unreasonable for BoS to decline such a request.

Bearing in mind the information Mr and Mrs B gave BoS about their income in 2021 and as BoS's maximum age is 80 years old, I do not consider that a switch to a repayment mortgage over a relatively short term would have been affordable for Mr and Mrs B. So it was reasonable for BoS to decline a request to switch to repayment.

#### Sale of mortgage and endowment

I can consider if the sale of the mortgage created an unfair relationship, for example if the mortgage was unaffordable or Mr and Mrs B did not have a plan to repay it.

There is limited information regarding the sale of the mortgage in 2001 and increased credit limit in 2002. But looking at the information BoS had about Mr B's income and taking into account what in my experience was good industry practice at the time in question, I think it would be difficult for me to conclude that the borrowing was unaffordable or that it was an unreasonable decision for BoS to lend the amount it did.

The mortgage offer set out that it was Mr and Mrs B's responsibility to make sure that they had suitable arrangements in place to repay the principal borrowing at the end of term. We know that Mr and Mrs B had an endowment policy in place. And the application said they were going to overpay to repay the mortgage. Again, bearing in mind what was expected at the time in question, I do not consider it was unreasonable for BoS to agree an interest only mortgage on that basis.

I do not consider the sale of the mortgage or the increase in credit limit created an unfair relationship for the reasons I have explained above.

There is no evidence that the endowment policy was sold by BoS. In 2020 Bos invited Mr and Mrs B to provide any other evidence that it sold the policy. But I can't see they have done so. I don't consider Bos could reasonably be required to do anything else in the circumstances

#### Mortgage balance and payments

The main reason Mr and Mrs B's mortgage balance has gone up is because the payments they were making to the mortgage did not cover the interest that was being applied. That is because once the term ended, when the interest rate changed BoS did not amend the payment and collect the amount that was due.

BoS's position is that it is unable to recalculate the payments due when the term of a mortgage ends - but it writes to borrowers to tell them when the interest rate changed and that the payment will not change. The letter from the bank merely says "*We can't work out a new payment for the parts of the mortgage where the term has ended. So your monthly*

*payment for those parts will stay the same and may not be enough to cover the change in interest rate*".

I do not think that is fair. There is the potential for harm to borrowers if their payment does not cover the interest due or they pay more than was required. A borrower reading that letter could reasonably understand that the bank was unable to work out a new payment and there was no choice other than to accept the incorrect payments.

There is likely more that BoS could have done either to amend the payment and/or to tell borrowers how much they needed to pay and how they could amend their payments. presumably if a borrower did contact BoS it would be able to calculate what payments were due and amend the payment.

If the bank BoS had set thing out more clearly, I consider it likely that Mr and Mrs B would have made the payments due to their mortgage. I say that because they amended their payment and maintained it from around July 2024. It therefore seems likely they would have done so in the past had they been given clear, fair and not misleading information - and they have made a payment to their mortgage each month.

This complaint is about an unfair relationship - but although we can consider the fairness from the point the term ended, I think it would be fair to cap redress to six years from the date of complaint to reflect that there is perhaps more Mr and Mrs B could have done to address things at an earlier point. BoS has agreed to re-work Mr and Mrs B's mortgage as if the payment had been calculated correctly from 1 May 2018 until date of settlement. I consider that is a fair offer.

BoS said if Mr and Mrs B accept the offer, it would need to adjust the contractual mortgage payment based on the current interest rate. That is reasonable. It said that it would need clarification that Mr and Mrs B are aware that its system will not recalculate the payment amount and that it will not agree to cover any future shortfall. Obviously, Mr and Mrs B should now know that they need to contact BoS to adjust their payments when the interest rate changes. But that does not remove BoS's duty to support their understanding, communicate in a way that is clear, fair and not misleading and have due regard for their interests.

I am unable to say whether acceptance of this offer would be sufficient for BoS to show that it has communicated in a suitably clear way or that it has treated Mr and Mrs B fairly in the future.

#### Legal fees

I understand the legal fees were applied after we'd started investigating this complaint and BoS is dealing with it as a separate matter.

#### Business account

Mr and Mrs B consider their problems were caused by the closure in 2015 by BoS of a business account held by a limited company where they were both directors. They said that led to the failure of their limited company and their problems repaying the mortgage.

As the investigator explained we can't consider this complaint. Nor can we deal with any matter relating to the limited company's dealings with BoS or Mr and Mrs B's involvement with that in their capacity as directors of that company. There are a number of reasons for that. Firstly, the eligible complainant under our rules is the limited company. That company is dissolved so there is no person to bring a complaint.

Secondly. There is no basis on which Mr and Mrs B could bring a complaint on behalf of the limited company or in their personal capacity. I say that as they would not have been acting as consumers in respect of any relationship they had with bank in regard to the limited company's account in their positions as directors of those companies – and only the limited company had the necessary relationship with BoS to be able to bring a complaint

about it.

Thirdly, the complaint has been referred outside our time limits. The considerations around whether there was an unfair relationship only arise because of provisions of the Consumer Credit Act 1974. They do not apply to incorporated companies.

### **My final decision**

My final decision is that bank of Scotland Plc should re-work Mr and Mrs B's mortgage so that the balance is what it would have been in had the monthly payment been calculated and set correctly to cover the full interest payment that was due to the mortgage and as if Mr and Mrs B had made those payments in full and on time.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 8 October 2025.

Ken Rose  
**Ombudsman**